

No. 16-15172

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CORNELE A. OVERSTREET, Regional Director of the Twenty-Eighth Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner–Appellee,

v.

SHAMROCK FOODS COMPANY,

Respondent–Appellant.

On Appeal from the United States District Court
for the District of Arizona
No. 2:15-cv-01785-DJH
The Honorable Diane J. Humetewa

Appellant’s Excerpts of Record: Volume I of II

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Excerpt 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Cornele A. Overstreet, for and on behalf of
the National Labor Relations Board,

Petitioner,

v.

Shamrock Foods Company,

Respondent.

No. CV-15-01785-PHX-DJH

ORDER

This matter is before the Court on Petitioner's Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act, As Amended (Doc. 1) and supporting Memorandum of Points and Authorities (Doc. 16). Respondent filed an Answer to Petition for Temporary Injunction (Doc. 37) along with a Memorandum in Opposition to Petition for Temporary Injunction (Doc. 45). Petitioner then filed a Reply to Respondent's Memorandum in Opposition (Doc. 56).

In addition, Petitioner filed an Appendix of Exhibits in Support of Petition for Temporary Injunction (Doc. 6) and Supplemental Exhibits (Docs. 31, 33). Respondent also filed an Appendix of Exhibits in Support of its Memorandum in Opposition (Doc. 46).

The Court granted Petitioner's motion to rely on affidavits and other documentary evidence, including the administrative hearing record, to support its request for temporary injunctive relief. (Doc. 58). The Court also allowed Petitioner to submit audio and video recordings that were included as exhibits in the underlying administrative proceeding.

1 (*Id.*). Due to the volume of materials submitted for the Court’s consideration, the Court
2 warned the parties that they were responsible, in their written materials and at oral
3 argument, for directing the Court to the evidence in the record that supported their
4 respective positions. (Doc. 58 at 3-4).

5 The Court held a preliminary injunction hearing on January 6, 2016, at which it
6 again reiterated the parties’ obligation to point the Court to specific information in the
7 record to support their positions. (Doc. 66 at 4). Toward that end, the Court also granted
8 the parties an opportunity to file supplemental briefing within seven days after the
9 hearing. (Doc. 61). Petitioner and Respondent each filed a supplemental brief on
10 January 13, 2016. (Docs. 64, 65).

11 **I. Background**

12 Petitioner alleges in the Petition (Doc. 1) that on April 15, 2015, Bakery,
13 Confectionary, Tobacco Workers’ and Grain Millers International Union, Local Union
14 No. 232, AFL-CIO-CLC (the “Union”) filed a charge with the National Labor Relations
15 Board (the “Board”) alleging that Respondent was engaging in unfair labor practices
16 within the meaning of 29 U.S.C. § 158(a)(1). (Doc. 1 at 2). After the Union filed two
17 amended charges with the Board, the General Counsel, on behalf of the Board, issued a
18 Complaint on July 21, 2015 alleging that Respondent engaged in unfair labor practices
19 within the meaning of § 158(a)(1) and (3). (*Id.* at 2-3). General Counsel issued an
20 Amendment to the Complaint on August 14, 2015. (*Id.*). Respondent answered the
21 Complaint and the Amendment, denying that it committed any unfair labor practices.
22 (*Id.*). A hearing before an Administrative Law Judge (“ALJ”) was held over several days
23 in September 2015. The ALJ’s decision is pending.

24 Petitioner brings this action pursuant to 29 U.S.C. § 160(j) (also known as § 10(j)
25 of the National Labor Relations Act), which authorizes the District Court to consider
26 appropriate temporary relief pending the resolution of a Board complaint against an
27 employer for unfair labor practices. Petitioner contends “there is a substantial likelihood
28 of success in prevailing in the underlying administrative proceedings . . . and establishing

1 that Respondent has engaged in, and is engaging in, unfair labor practices in violation of
2 [29 U.S.C. § 158(a)(1) and (3)].” (Doc. 1 at 4). The alleged unfair labor practices
3 include:

4 threatening employees with adverse employment actions
5 because of their support for the Union; interrogating
6 employees about their protected activities; spying on its
7 employees as they engage in protected activities and making
8 employees believe that their protected activities are constantly
9 under surveillance; soliciting grievances from employees and
10 promising to correct those grievances in an effort to
11 undermine union support; instructing employees to ascertain
and disclose employees’ sympathies for the Union; and
confiscating employees’ union literature, and issuing
discriminatory discipline to an [sic] vocal union supporter and
discharging another prominent union supporter because of
their activities protected under [29 U.S.C. § 157], including
their activities in support of the Union.

12 (Doc. 1 at 4-5). Petitioner’s factual allegations in support of their claims span several
13 pages and need not be repeated here. (Doc. 1 at 5-14). In discussing the parties’
14 arguments below, the Court will address the relevant facts that pertain thereto.

15 Petitioner contends that “unless injunctive relief is immediately obtained, it can
16 fairly be anticipated that employees will permanently and irreversibly lose the benefits of
17 the Board’s processes and the exercise of statutory rights for the entire period required for
18 the Board adjudication of this matter, a harm which cannot be remedied in due course by
19 the Board.” (Doc. 1 at 14-15). Petitioner further contends that there is no adequate
20 remedy at law for the irreparable harm being caused by Respondent’s conduct and that
21 granting temporary injunctive relief will cause no undue hardship to Respondent. (Doc. 1
22 at 15). Additionally, Petitioner asserts that the balance of equities weighs heavily in its
23 favor. (*Id.*).

24 For relief, Petitioner seeks an order directing Respondent to stop its allegedly
25 unlawful employment practices. (Doc. 1 at 16-18). In addition, Petitioner asks that the
26 Court order Respondent to reinstate a discharged employee, Thomas Wallace, and
27 rescind any disciplinary action taken against another employee, Mario Lerma, among
28 other requests for injunctive relief. (Doc. 1 at 18-21).

II. Discussion

A. Legal Standards

The same standards for preliminary or temporary injunctive relief in other civil cases apply in proceedings under § 160(j). *See Frankl v. HTH Corp.*, 650 F.3d 1334, 1355 (9th Cir. 2011) (applying the preliminary injunction standard in connection with a petition for relief under Section 10(j)). "A preliminary injunction is an extraordinary remedy never awarded as a matter of right." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 24, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. The Ninth Circuit has adopted a "sliding scale approach under which a preliminary injunction could issue where the likelihood of success is such that 'serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor.'" *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003)). This approach survives the four-element test set forth in *Winter* when applied as part of that test. *Id.* at 1131-1132. Thus, "'serious questions going to the merits' and a balance of hardships that tips sharply towards plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 1135. The moving party "bears the heavy burden of making a 'clear showing' that it [is] entitled to a preliminary injunction." *Center for Competitive Politics v. Harris*, 784 F.3d 1307, 1312 (9th Cir. 2015) (citing *Winter*, 555 U.S. at 22).¹

¹ The Court is not persuaded by Respondent's argument that a "heightened standard" applies here because there is some risk that constitutionally protected speech will be enjoined. (Doc. 45 at 10-11) (citing *McDermott ex rel. NLRB v. Ampersand Publishing, LLC*, 593 F.3d 950, 957 (9th Cir. 2010)). In *McDermott*, the Court found that granting the requested injunction against the respondent newspaper publisher would present at least some risk of compromising the publication's First Amendment right to exercise editorial control. No such risk is present here.

B. Application

1. Likelihood of Success on Merits

Petitioner contends it has met the threshold for establishing a likelihood of success on the merits of the allegations in the Complaint that Respondents committed unfair labor practices in violation of 29 U.S.C. § 158(a)(1) and (3). Section 158(a)(1) makes it unlawful for an employer “to interfere with, restrain, or coerce employees in the exercise of their rights” to join labor unions and bargain collectively. Sections 158(a)(3) makes it unlawful for an employer “by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” Here, Petitioner claims Respondent (1) threatened employees with loss of benefits; (2) created the impression of surveillance of union activity; (3) engaged in actual surveillance of union activity; (4) continually solicited employees’ grievances; (5) interrogated employees regarding union activity; (6) directed employees to report union activity; (7) confiscated union literature and disparately enforced its distribution policy; (8) increased wages to discourage support for the union; (9) unlawfully discharged Thomas Wallace; and (10) unlawfully disciplined Mario Lerma. (Doc. 16 at 21-33).

“The regional director in a § 10(j) proceeding ‘can make a threshold showing of likelihood of success by producing some evidence to support the unfair labor practice charge, together with an arguable legal theory.’”² *Frankl*, 650 F.3d at 1356 (quoting *Miller v. California Pacific Medical Center*, 19 F.3d 449, 460 (9th Cir. 1994)). “Moreover, when the Director seeks and receives approval from the NLRB before filing a § 10(j) petition, the Director is owed special deference because ‘likelihood of success is a function of the probability that the Board will issue an order determining that the unfair labor practices alleged by the Regional Director occurred.’” *Small v. Avanti Health*

² Several times during the hearing, Petitioner stressed that this Court should issue a preliminary injunction for purposes of “sending a message” to employees. Petitioner’s argument to issue an injunction for purposes of “sending a message” is not a viable legal theory and would be an improper basis for the granting of such relief.

1 *Systems, LLC*, 661 F.3d 1180, 1187 (9th Cir. 2011) (quoting *Frankl*, 650 F.3d at 1355).
2 “That the NLRB ‘itself decid[ed] to file a § 10(j) petition might signal its future decision
3 on the merits, assuming the facts alleged in the petition withstand examination at trial.’”
4 *Id.* (quoting *McDermott v. Ampersand Publishing, LLC*, 593 F.3d 950, 964 (9th Cir.
5 2010)). This deference is bolstered by the fact that “[t]he NLRB files for § 10(j)
6 injunctions relatively rarely.” *See id.*

7 Here, as Petitioner asserted at oral argument, the Board unanimously authorized
8 the filing of the § 10(j) petition. (Doc. 66 at 18). The “special deference” owed to
9 Petitioner’s receipt of unanimous approval by the Board supports a finding of likelihood
10 of success on the merits. Likewise, the Court finds that other evidence in the record, as
11 cited by Petitioner, supports a likelihood of success on the unfair labor practices claims.

12 For example, the transcript of the January 28, 2015 “town hall” meeting supports
13 Petitioner’s claims that Respondent has interfered with the employees’ unionization
14 rights. (*See* PX 58, GC Exh. 8a at 2-33; Doc. 33-1 at 46-78). Mark Engdahl,
15 Respondent’s Vice President of Operations, under the guise of “educating every person in
16 this room with some facts and some knowledge,” presided over the meeting and
17 expressed his very negative views of unions, in addition to showing what observers said
18 was an anti-union video. (*See id.*). Petitioner’s allegation that Respondent threatened
19 employees with loss of benefits is supported by Engdahl’s statements that if a union
20 represents the employees, “[t]he slate is wiped clean on wages, the slate is wiped clean on
21 benefits, the slate is wiped clean on working conditions.” (PX 58, GC Exh. 8a at 9; Doc.
22 33-1 at 54). He further claimed that unionizing could cause the employees to come out
23 worse than they were before. (*Id.*).

24 The Court finds Respondent’s reasoning for some of this activity unavailing. For
25 instance, during the hearing, Respondent explained that the anti-union video was played
26 in an effort to educate employees about their rights and resulted from the Teamsters
27 Union “trying to get in at Shamrock’s California location.” Respondent contends that
28

1 this was within Shamrock's right pursuant to section 8(c).³ Bolstered by the
2 aforementioned cumulative activity and for reasons to be discussed further, the Court is
3 not persuaded.

4 With regard to Petitioner's claim that Respondent created the impression of
5 surveillance of union activity, Petitioner has cited evidence in the record showing a
6 likelihood of success on that claim. Petitioner points to a meeting on April 29, 2015, in
7 which Engdahl said he wanted to have a discussion "on what's going on here with this
8 union organizing stuff." (PX 59, GC Exh. 12a at 2; Doc. 33-2 at 44). After stating that
9 he "understands who's behind it," he said he is "going to call bullshit on a lot of stuff
10 that's being spread" and that the Union will "hurt Shamrock," "will hurt all of you," and
11 "will hurt everybody in the future." (*Id.*). At an earlier "union education meeting" on
12 February 24, 2015, the Warehouse Operations Manager, Ivan Vaivao, told employees
13 that "we kind of have some ideas . . . of who's out there." (PX 58, GC Exh. 9a at 2; Doc.
14 33-1 at 83). He also told them that if they are approached about joining the Union and
15 they're not interested, they should speak up and let someone know this person is
16 "bugging" them. (PX 58, GC Exh. 9a at 4; Doc. 33-1 at 86). And at a subsequent
17 meeting on March 26, 2015, Vaivao told employees that the guys who are organizing are
18 Shamrock associates, that they're disgruntled, that they have personal agendas against
19 Shamrock and that "we know who they are." (PX 58, GC Exh. 10a at 5; Doc. 33-1 at
20 123). Vaivao also said that "[w]e know they've been conducting meetings offsite here."
21 (*Id.*). The Court finds that this evidence demonstrates a likelihood of success on the
22 merits of Petitioner's claim that Respondent is unlawfully creating the impression in the
23 employees' minds that it has been engaging in surveillance of the employees' union
24 activities.

25 The Court also finds Petitioner has shown a likelihood of success on the merits of

26 ³ 29 U.S.C. § 158(c) provides that "[t]he expressing of any views, argument, or
27 opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form
28 shall not constitute or be evidence of an unfair labor practice under any of the provision
of this Act, if such expression contains no threat of reprisal or force or promise of
benefit."

1 the allegations that Respondent discharged Mr. Wallace in violation of § 158(a)(1) and
2 (3). The evidence shows Mr. Wallace spoke up at two large “town hall” meetings. At
3 the first one on January 28, 2015, he asked questions about unionization, including why
4 Shamrock’s competitors are unionized but they are not. (PX 58, GC Exh. 8a at 12-17;
5 Doc. 33-1 at 57-62; PX 28 at 2; Doc. 6-1 at 16). Thus, early in the union campaign,
6 Respondent was aware that Wallace was inquiring about unions. Wallace recalls an anti-
7 union video being played at the meeting “where union members were harassing non-
8 union members to sign union cards and showed unions calling people and threatening
9 them that if they didn’t sign cards they wouldn’t have jobs.” (PX 28 at 2; Doc. 6-1 at 16).
10 After the meeting, Wallace’s supervisor, Jake Myers, came to his work area and asked
11 him what he thought about the union. (PX 28 at 3; Doc. 6-1 at 17). Wallace said he
12 didn’t know and planned to do his own research, but others he had talked to, including his
13 dad, a neighbor and a Cisco driver, said the benefits are better and unions in general are
14 better for the people. (*Id.*). Wallace subsequently attended a union organization meeting
15 at a Denny’s restaurant in early February. (PX 28 at 4; Doc. 6-1 at 18). Wallace signed a
16 union representation card at that meeting and agreed to be part of the campaign. (*Id.*).
17 When he left Denny’s, Wallace saw Warehouse Captain Art Manning’s red truck. (PX
18 28 at 5; Doc. 6-1 at 19). Others who attended the Denny’s meeting also saw Art
19 Manning and were concerned that he would report back to management about who
20 attended the meeting. (*Id.*). In early March, Wallace continued his union activity by
21 getting his father-in-law and brother-in-law, both of whom worked at the plant, to sign
22 union representation cards. (PX 28 at 7-8; Doc. 6-1 at 21-22).

23 Wallace next spoke up at a town hall meeting on March 31, 2015, when he asked
24 if employees could get their old health insurance back in light of the \$300 million the
25 company earned that year. (PX 59, GC Exh. 11a at 30; Doc. 33-2 at 33). He also asked
26 if the company could make a larger contribution to the employees’ Health Savings
27 Accounts. (PX 59, GC Exh. 11a at 31; Doc. 33-2 at 34). Wallace stated in an affidavit
28 that about 200 employees were at the meeting along with several management level

1 company representatives. (PX 28 at 8; Doc. 6-1 at 22). In response to his first question,
2 “some employees started clapping and laughing and chattering.” (PX 28 at 9; Doc. 6-1 at
3 23).

4 A week after the meeting, on April 6, 2015, Wallace was fired. (PX 28 at 10; Doc.
5 6-1 at 24). He was escorted to HR where he met with James Allen from HR and Ivan
6 Vaivao. (*Id.*). Vaivao explained that he was being terminated because he was
7 disrespectful at the town hall meeting the previous week. (*Id.*). Vaivao told him that
8 management was offended by the questions he asked regarding employee healthcare.
9 (*Id.*).

10 Petitioner’s counsel asserted at oral argument that obtaining better health
11 insurance was one of the main factors driving employees to the Union. (Doc. 66 at 26).
12 Respondent’s knowledge of the connection between union activity and employees’
13 dissatisfaction with changes in their health insurance benefits was demonstrated at the
14 April 29, 2015 meeting. (PX 59, GC Exh. 12a at 2-6; Doc. 33-2 at 44-49). After
15 discussing the union activity and stating that a union is “not good for us here at
16 Shamrock,” Mark Ergdahl recognized that employees were still upset over the changes in
17 their health insurance benefits. (PX 59, GC Exh. 12a at 3-4; Doc. 33-2 at 46-47).

18 The Court has reviewed the audio recording and the transcript of the March 31
19 town hall meeting and finds little evidence to support Respondent’s stated reasons for
20 terminating Mr. Wallace – that he was belligerent and disrespectful at the meeting.
21 Although Mr. Wallace asked candid questions, the recording establishes that his tone was
22 not at all disrespectful or belligerent. (PX 49). Given the demonstrated connection
23 between the employees’ dissatisfaction with the new health insurance benefits and their
24 interest in unionizing, the Court finds Petitioner has shown a likelihood of success on the
25 merits of the claim that Mr. Wallace’s participation in protected activities was a
26 motivating factor in his termination. Through the evidence cited, Petitioner can show Mr.
27 Wallace engaged in protected activity and that Respondent likely knew of this activity.
28 The Court further finds that Petitioner can likely show Respondent’s proffered reason for

1 firing Mr. Wallace was a pretext. Petitioner is therefore likely to succeed on the merits of
2 its claim involving Mr. Wallace.

3 The same is true for Petitioner's claim involving Mario Lerma. The Court has
4 reviewed the evidence cited by Petitioner in support of this claim and finds Petitioner has
5 shown a likelihood of success on the merits that Lerma was unlawfully disciplined as a
6 result of his union activity. (Doc. 64 at 5-6). Lerma states in his affidavit that on May 5,
7 2015, he was escorted to a meeting in Mark Engdahl's office. (PX 23 at 10, Doc. 6 at
8 124). Lerma interpreted Engdahl's statements to be a warning that if he didn't stop
9 organizing for the union or talking to other employees about it, he would be fired. (*Id.*).
10 In light of this warning, Lerma stopped talking about the union to any employees at work.
11 (*Id.*). Based on the Court's own review of the meeting with Engdahl, the Court agrees
12 with Mr. Lerma's interpretation of Engdahl's statements, thus demonstrating a likelihood
13 of success on this claim.

14 Although the Court will not here specifically address the evidence supporting
15 every one of Petitioner's claims of unfair labor practices, after review of the affidavits
16 submitted in support of the petition and the specific evidence cited in Petitioner's
17 supplemental brief, the Court finds Petitioner has met the burden of showing a likelihood
18 of success on the merits of the remaining claims. The first element of the *Winter* test is
19 therefore satisfied.

20 **2. Irreparable Harm**

21 As noted above, Petitioner must show that irreparable harm is likely. *Winter*, 555
22 U.S. at 20; *Avanti Health Systems, LLC*, 661 F.3d at 1191. "In the context of the NLRA,
23 'permitting an alleged unfair labor practice to reach fruition and thereby render
24 meaningless the Board's remedial authority is irreparable harm.'" *Frankl v. HTH Corp.*,
25 650 F.3d 1334, 1362 (9th Cir. 2011) (citations omitted). "In other words, while a district
26 court may not presume irreparable injury with regard to likely unfair labor practices
27 generally, irreparable injury is established if a likely unfair labor practice is shown along
28 with a present or impending deleterious effect of the likely unfair labor practice that

1 would likely not be cured by later relief.” *Id.* Similarly, “the discharge of active and
2 open union supporters risks a serious adverse impact on employee interest in unionization
3 and can create irreparable harm to the collective bargaining process.” *Id.* at 1363
4 (internal quotations and citations omitted). “For these reasons, a likelihood of success as
5 to a § [158(a)(3)] violation with regard to union activists that occurred during contract
6 negotiations or an organizing drive largely establishes likely irreparable harm, absent
7 unusual circumstances.” *Id.*

8 Petitioner argues that “Respondent’s unfair labor practices, and in particular its
9 actions against Wallace and Lerma, would reasonably have [a] serious adverse impact on
10 employee willingness to support the Union.” (Doc. 16 at 25). Petitioner points to “the
11 stark contrast in new authorization cards signed before and after Wallace’s discharge and
12 lack of new faces appearing at Union meetings” as evidence of the impact on employees’
13 exercise of their statutory right to organize. Petitioner contends it could be “years from
14 now” before the Board orders Wallace’s reinstatement, and that such an order at that
15 point would likely be an empty formality. Petitioner further argues that failure to
16 promptly reinstate Wallace and revoke the disciplinary action taken against Lerma could
17 extinguish the “spark to unionize” and limit employees’ ability to exercise their rights.

18 The Court agrees. As explained above, the Court finds a likelihood of success on
19 Petitioner’s claim that Respondent violated § 158(a)(3) when it discharged Mr. Wallace.
20 Under *Frankl*, absent unusual circumstances, that violation alone establishes likely
21 irreparable harm. Petitioner has added to that showing of irreparable harm by providing
22 evidence of a drop-off in union activity after Wallace’s discharge. Although the Court
23 recognizes Respondent’s point that attendance at union meetings and the number of union
24 representation cards signed had already started to decline before Wallace was discharged,
25 the Court agrees with Petitioner that the drop-off likely began as a result of Respondent’s
26 ongoing efforts to discourage union activity. Wallace’s discharge then added to the slow-
27 down in activity. As Steven Phipps explained in his affidavit in support of the petition,
28 the number of union representation cards dropped from over thirty per month at the

1 height of the campaign to less than four cards per month from May to August. (PX 27 at
2 1; Doc. 6-1 at 12). Mr. Phipps further explained that “[t]he momentum began to drop off
3 significantly after [Respondent] started conducting its roundtable meetings and after
4 Wallace was discharged in the beginning of April.” (*Id.*). For these reasons, the Court
5 finds Petitioner has demonstrated likely irreparable harm. The second element of the
6 *Winter* test is therefore satisfied.

7 **3. Balance of Hardships**

8 In considering the balance of hardships, the Court agrees with Petitioner that the
9 balance favors the imposition of injunctive relief. Respondent did not address this issue
10 in its Memorandum in Opposition, though counsel for Respondent addressed it briefly at
11 oral argument. (Doc. 66 at 52-53). The Court finds that granting Petitioner relief would
12 pose little, if any, harm to Respondent. Granting injunctive relief would simply require
13 Respondent to cease any unlawful conduct. It would not prohibit conduct within the
14 bounds of the NLRA. The requested injunctive relief would also require reinstatement of
15 Mr. Wallace and removal of disciplinary action against Mr. Lerma. As Petitioner points
16 out, however, Respondent retains the right to impose discipline against its employees,
17 including Wallace and Lerma, in a way that comports with the law. In contrast, the Court
18 finds a likelihood of irreparable harm to the employees in the absence of interim relief.
19 The Court therefore finds that the balance of hardships tips in favor of Petitioner. The
20 third element of the *Winter* test is satisfied.

21 **4. Public Interest**

22 Finally, with regard to the public interest, the Court finds that by demonstrating a
23 likelihood of success on the merits and likely irreparable harm, Petitioner has
24 demonstrated that § 10(j) relief here is in the public interest. *See Frankl*, 650 F.3d at
25 1365 (“Ordinarily then, when, as here, the Director makes a strong showing of likelihood
26 of success and likelihood of irreparable harm, the Director will have established that
27 preliminary relief is in the public interest.”). “In § 10(j) cases, the public interest is to
28 ensure that an unfair labor practice will not succeed because the Board takes too long to

1 investigate and adjudicate the charge.” *Id.* That interest is furthered by granting the
2 preliminary injunctive relief requested here. The fourth and final element of the *Winter*
3 test is therefore satisfied.


4 **III. Conclusion**

5 For the foregoing reasons, the Court finds Petitioner has satisfied the four-part
6 standard set forth in *Winter* for preliminary injunctive relief. The petition will therefore
7 be granted. The injunction itself will be issued by separate order.

8 Accordingly,

9 **IT IS ORDERED** that Petitioner's Petition for Temporary Injunction under
10 Section 10(j) of the National Labor Relations Act, As Amended (Doc. 1) is **GRANTED**.

11 Dated this 1st day of February, 2016.

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14 
15 Honorable Diane J. Humetewa
16 United States District Judge
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Excerpt 2

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Cornele A. Overstreet,
10 Plaintiff,
11 v.
12 Shamrock Foods Company,
13 Defendant.
14

No. CV-15-01785-PHX-DJH
ORDER

15 Based on the Order, filed simultaneously herewith, granting the Petition for
16 Temporary Injunction,

17 **IT IS HEREBY ORDERED:**

18 Respondent, its officers, agents, servants, representatives, successors, and assigns,
19 and all persons acting in concert with it or them, be, and hereby are enjoined and
20 restrained from:

- 21 (a) interrogating employees about their union support and activities, and
22 the sympathies of other employees;
23 (b) conveying to employees that their union activities are under
24 surveillance;
25 (c) engaging in surveillance of employees' union or other protected
26 activity;

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1 (d) threatening employees with loss of benefits if they select Bakery,
2 Confectionery, Tobacco Workers' and Grain Millers International Union, Local Union
3 No. 232, AFL-CIO-CLC (the Union) as their bargaining representative;

4 (e) informing employees that it is futile for them to select the Union or
5 any other labor organization as their bargaining representative;

6 (f) granting employees benefits, including, but not limited to, increased
7 wages, for the purpose of influencing employees' union activity;

8 (g) soliciting employee complaints and grievances, and promising
9 employees increased benefits and improved terms and conditions of employment if they
10 refrain from union organizing activities;

11 (h) asking employees to ascertain or disclose the union membership,
12 activities and sympathies of other employees;

13 (i) threatening employees with unspecified reprisals because of their
14 activities in support of the Union;

15 (j) selectively and disparately enforcing its no-solicitation and no-
16 distribution rules based on employees' union and other protected activity;

17 (k) disciplining employees by issuing them verbal warnings or
18 otherwise because they engage in union and other protected activity to discourage
19 employees from engaging in these activities;

20 (l) discharging employees because they engaged in concerted activities
21 involving their terms and conditions of employment or in activities in support of the
22 Union, and in order to discourage membership in the Union or in any other labor
23 organization; and

24 (m) in any other manner interfering with, restraining, or coercing
25 employees in the exercise of the rights guaranteed them under Section 7 of the National
26 Labor Relations Act [29 U.S.C. § 157].

27 **IT IS FURTHER ORDERED** that Respondent, its officers, agents, servants,
28 representatives, successors, and assigns, and all persons acting in concert with it or them,

1 pending the final disposition of the matters involved herein pending before the Board,
2 shall take the following affirmative actions:

3 (a) Within five (5) days of this Order, withdraw its offer to Thomas
4 Wallace of the Separation Agreement and Release and Waiver presented to him about
5 April 6, 2015, and notify Wallace in writing that the offer has been withdrawn and that it
6 is no longer seeking his agreement to the Separation Agreement and Release and Waiver.

7 (b) Within five (5) days of this Order, remove from its files, any and all
8 records of the verbal warning issued to Mario Lerma, and within three (3) days thereafter,
9 notify him, in writing, that this was done, and that the verbal warning will not be used
10 against him in any way;


11 (c) Within five (5) days of this Order, offer Thomas Wallace, in writing,
12 immediate reinstatement to his former job, or if that jobs no longer exists, to a
13 substantially equivalent position of employment, without prejudice to his seniority and
14 other rights and privileges previously enjoyed, displacing, if necessary, any workers hired
15 or transferred to replace him;

16 (d) Within five (5) days of this Order, remove from its files, any and all
17 records of the discharge of Thomas Wallace, and within three (3) days thereafter, notify
18 him in writing that this was done, and that the discharge will not be used against him in
19 any way;

20 (e) Within fourteen (14) days of this Order, post copies of this Order, as
21 well as translations of this Order provided by the Regional Director of the Board in
22 languages other than English as necessary to ensure effective communication to
23 Respondent's employees, at Respondent's facilities located at 2450 N. 29th Ave.,
24 Phoenix, Arizona, and 2228 N. Black Canyon Highway, Phoenix, Arizona, in all places
25 where notices to its employees are normally posted; maintain these postings during the
26 pendency of the Board's administrative proceeding free from all obstructions and
27 defacements; grant all employees free and unrestricted access to said postings; and grant
28 to agents of the Board reasonable access to its facilities to monitor compliance with this
posting requirement; and

1 (f) Within twenty-one (21) days of this Order, file with the Court, and
2 submit a copy to the Regional Director for Region 28 of the Board, a sworn affidavit
3 from a responsible agent of Respondent stating, with specificity, the manner in which
4 Respondent has complied with the terms of the Injunction Order.

5 Dated this 1st day of February, 2016.

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9 Honorable Diane J. Humetewa
United States District Judge
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Excerpt 3

MILLIGAN LAWLESS, P.C.

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Attorneys for Respondent Shamrock Foods Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

CORNELE A. OVERSTREET,

Petitioner,

vs.

SHAMROCK FOODS COMPANY,

Respondent.

Case No. CV-15-01785-PHX-DJH

Honorable Diane J. Humetewa

**RESPONDENT SHAMROCK FOODS
COMPANY'S NOTICE OF
PRELIMINARY INJUNCTION APPEAL
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT**

Respondent Shamrock Foods Company (“Shamrock”), by and through its undersigned counsel, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the following Orders of this Court:

1. Order Granting Petitioner’s Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act, As Amended (Dkt. 67), entered in this case on February 1, 2016;
2. Temporary Injunction Order (Dkt. 68), entered in this case on February 1, 2016;
3. Order Granting Petitioner’s Motion to Try Petition for Temporary Injunction on the Basis of Affidavits and Other Documentary Evidence, First and Second Motions for Leave to File Non-Electronic Exhibit in Support of Memorandum of Points and Authorities, and Motion to Supplement Record (Dkt. 58), entered in this case on December 18, 2015.

Pursuant to Ninth Circuit Rule 3-2, attached is a Representation Statement that identifies all parties to this action, along with the names, addresses and telephone numbers of their respective counsel.

Date: February 4, 2016

Respectfully submitted,

MILLIGAN LAWLESS, P.C.

By: /s/ James Burr Shields
James Burr Shields, II

BAKER & HOSTETLER LLP

By: /s/ Nancy Inesta
Jay P. Krupin
Marc A. Antonetti
Todd A. Dawson
Nancy Inesta

Attorneys for Respondent

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REPRESENTATION STATEMENT

1. Respondent-Appellant is Shamrock Foods Company.

Counsel for Respondent-Appellant:

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2. Petitioner-Appellee is Cornele A. Overstreet, for and on behalf of the National Labor Relations Board.

Counsel for Petitioner-Appellee:

Judith E. Davila
Sara S. Demirok
Elise F. Oviedo
National Labor Relations Board, Region 28
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Date: February 4, 2016

Respectfully submitted,

MILLIGAN LAWLESS, P.C.

By: /s/ James Burr Shields
James Burr Shields, II

BAKER & HOSTETLER LLP

By: /s/ Nancy Inesta
Jay P. Krupin
Marc A. Antonetti
Todd A. Dawson
Nancy Inesta

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2016, I electronically filed the foregoing *Respondent Shamrock Foods Company's Notice Of Preliminary Injunction Appeal to the United States Court Of Appeals For The Ninth Circuit* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Judith E. Davila
Sara S. Demirok
Elise F. Oviedo
National Labor Relations Board, Region 28
2600 N. Central Avenue, Suite 1400
Phoenix, Arizona 85004

/s/ Shirley Suzuki, Legal Assistant
Shirley Suzuki

Excerpt 4

**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:15-cv-01785-DJH**

Overstreet v. Shamrock Foods Company
Assigned to: Judge Diane J Humetewa
Case in other court: Ninth Circuit, 16-15172
Cause: 29:160(1) National Labor Relations Act

Date Filed: 09/08/2015
Jury Demand: None
Nature of Suit: 720 Labor: Labor/Mgt.
Relations
Jurisdiction: U.S. Government Plaintiff

Plaintiff

Cornele A Overstreet
*Regional Director of the Twenty-Eighth
Region of the National Labor Relations
Board, for and on behalf of:
on behalf of
National Labor Relations Board*

represented by **Elise Frances Oviedo**
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V.

Defendant

Shamrock Foods Company

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/08/2015	<u>1</u>	COMPLAINT/ Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act, as Amended filed by Cornele A Overstreet. (submitted by Judith Davila) (Attachments: # <u>1</u> Civil Cover Sheet)(REK) (Entered: 09/08/2015)
09/08/2015	<u>2</u>	This case has been assigned to the Honorable Diane J. Humetewa. All future pleadings or documents should bear the correct case number: CV-15-01785-PHX-DJH. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (REK) (Entered: 09/08/2015)
09/08/2015	<u>3</u>	Additional Attachments to Main Document re: <u>1</u> Complaint <i>Proposed Order to Show Cause</i> by Plaintiff Cornele A Overstreet. (Davila, Judith) (Entered: 09/08/2015)
09/08/2015	<u>4</u>	Additional Attachments to Main Document re: <u>1</u> Complaint <i>Proposed Order Granting Injunction</i> by Plaintiff Cornele A Overstreet. (Davila, Judith) (Entered: 09/08/2015)
09/08/2015	<u>5</u>	Additional Attachments to Main Document re: <u>1</u> Complaint <i>Jurat</i> by Plaintiff Cornele A Overstreet. (Davila, Judith) (Entered: 09/08/2015)
09/08/2015	<u>6</u>	Additional Attachments to Main Document re: <u>1</u> Complaint <i>Appendix of Exhibits and Exhibits</i> by Plaintiff Cornele A Overstreet. (Attachments: # <u>1</u> Exhibit Part 2 of 3, # <u>2</u> Exhibit Part 3 of 3)(Davila, Judith) (Entered: 09/08/2015)
09/08/2015	<u>7</u>	***STRICKEN per <u>15</u> ***LODGED PROPOSED MEMORANDUM of Points and Authorities in Support of <i>Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act</i> by Plaintiff Cornele A Overstreet. (Davila, Judith)

		*Modified to correct event on 9/9/2015 (REK). Modified on 9/14/2015 (REK). (Entered: 09/08/2015)
09/08/2015	<u>8</u>	First MOTION to Expedite Hearing by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion for Expedited Hearing)(Davila, Judith) (Entered: 09/08/2015)
09/08/2015	<u>9</u>	First MOTION Motion to Try Petition for Temporary Injunction on the Basis of Affidavits and Other Documentary Evidence by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion to Try on Affidavits)(Davila, Judith) (Entered: 09/08/2015)
09/08/2015	<u>10</u>	First MOTION for Leave to File Excess Pages for Memorandum of Points and Authorities: <u>7</u> by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion to Exceed Pg Limits)(Davila, Judith) *Modified to correct text on 9/9/2015 (REK). (Entered: 09/08/2015)
09/08/2015	<u>11</u>	First MOTION for Leave to File Non-Electronic Exhibit in Support of Petitioner's Memorandum of Points and Authorities: <u>7</u> by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion to File Non-Electronic Exhibit)(Davila, Judith) *Modified to correct docket text on 9/9/2015 (REK). (Entered: 09/08/2015)
09/09/2015	<u>12</u>	SERVICE EXECUTED filed by Cornele A Overstreet: Certificate of Service re: Initiating Documents, Motions, and Proposed Orders upon Todd A. Dawson, Nancy Inesta, Jay Krupin on 9-9-15. (Davila, Judith) (Entered: 09/09/2015)
09/09/2015	<u>13</u>	ORDER that motions pursuant to Fed. R. Civ. P. 12(b) are discouraged if the defect can be cured by filing an amended pleading. The parties must meet and confer prior to the filing of such motions to determine whether it can be avoided. ORDERED that Plaintiff serve a copy of this Order upon Defendant and file a notice of service. See Order for details. Signed by Judge Diane J Humetewa on 9/8/2015. (LFIG) (Entered: 09/09/2015)
09/09/2015	<u>14</u>	SERVICE EXECUTED filed by Cornele A Overstreet: Certificate of Service re: Order Regarding Rule 12(b) Motions upon Todd A. Dawson, Nancy Inesta, Jay Krupin on 9-9-15. (Davila, Judith) (Entered: 09/09/2015)
09/14/2015	<u>15</u>	ORDER: Petitioner's Motion for Leave to File Memorandum of Points and Authorities in Excess of Page Limitations (Doc. <u>10</u>) is GRANTED in part. IT IS FURTHER ORDERED that the Memorandum currently lodged at doc. <u>7</u> is stricken. Petitioner may re-file a supporting memorandum in accordance with this Order that does not exceed thirty (30) pages, exclusive of any attachments and table of contents. Signed by Judge Diane J Humetewa on 09/14/2015. (REK) (Entered: 09/14/2015)
09/18/2015	<u>16</u>	*MEMORANDUM of Points and Authorities in Support of Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Cornele A Overstreet. (Davila, Judith)*Modified to correct event on 9/21/2015 (REK). (Entered: 09/18/2015)
09/18/2015	<u>17</u>	SERVICE EXECUTED filed by Cornele A Overstreet: Certificate of Service re: MEMORANDUM of Points and Authorities in Support of Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act upon Todd A. Dawson, Attorney at Law Baker & Hostetler LLP on 9-18-15. (Davila, Judith) (Entered: 09/18/2015)
09/21/2015	<u>18</u>	NOTICE of Appearance by James Burr Shields, II on behalf of Shamrock Foods Company. (Shields, James) (Entered: 09/21/2015)
09/22/2015	<u>19</u>	MOTION for Admission Pro Hac Vice as to attorney Jay P Krupin on behalf of Shamrock Foods Company. (BAS) (Entered: 09/23/2015)
09/22/2015	<u>20</u>	MOTION for Admission Pro Hac Vice as to attorney Marc A Antonetti on behalf of Shamrock Foods Company. (BAS) (Entered: 09/23/2015)
09/23/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX163083 as to Jay P Krupin. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry.

		(BAS) (Entered: 09/23/2015)
09/23/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX163082 as to Marc A Antonetti. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 09/23/2015)
09/23/2015	<u>21</u>	ORDER pursuant to General Order 09-08 granting <u>19</u> Motion for Admission Pro Hac Vice; granting <u>20</u> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 09/23/2015)
09/23/2015	<u>22</u>	MOTION for Admission Pro Hac Vice as to attorney Todd A Dawson on behalf of Shamrock Foods Company. (BAS) (Entered: 09/23/2015)
09/23/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PXH163158 as to Todd A Dawson. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 09/23/2015)
09/23/2015	<u>23</u>	MOTION for Admission Pro Hac Vice as to attorney Nancy Inesta on behalf of Shamrock Foods Company. (BAS) (Entered: 09/23/2015)
09/23/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX163159 as to Nancy Inesta. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 09/23/2015)
09/23/2015	<u>24</u>	ORDER pursuant to General Order 09-08 granting <u>22</u> Motion for Admission Pro Hac Vice; granting <u>23</u> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 09/23/2015)
09/25/2015	<u>25</u>	Corporate Disclosure Statement by Shamrock Foods Company. (Shields, James) (Entered: 09/25/2015)
09/25/2015	<u>26</u>	RESPONSE in Opposition re: <u>8</u> First MOTION to Expedite Hearing <i>Respondent's Opposition to Petitioner's Motion for Expedited Hearing</i> filed by Shamrock Foods Company. (Shields, James) (Entered: 09/25/2015)
09/25/2015	<u>27</u>	*Response in Opposition to Motion re: <u>11</u> Petitioner's Motion for Leave to File Non-Electronic Exhibit in Support of Petitioner's Memorandum of Points and Authorities by Defendant Shamrock Foods Company. (Shields, James) *Modified to correct event on 9/28/2015 (REK). (Entered: 09/25/2015)
09/25/2015	<u>28</u>	*Response in Opposition to Motion re: <u>2</u> Motion to Try Petition for Temporary Injunction on the Basis of Affidavits and Other Documentary Evidence by Defendant Shamrock Foods Company. (Attachments: # <u>1</u> Exhibit A)(Shields, James) *Modified to correct event on 9/28/2015 (REK). (Entered: 09/25/2015)
10/02/2015	<u>29</u>	REPLY to Response to Motion re: <u>2</u> First MOTION Motion to Try Petition for Temporary Injunction on the Basis of Affidavits and Other Documentary Evidence filed by Cornele A Overstreet. (Oviedo, Elise) (Entered: 10/02/2015)
10/02/2015	<u>30</u>	REPLY to Response to Motion re: <u>11</u> First MOTION for Leave to File Non-Electronic Exhibit filed by Cornele A Overstreet. (Oviedo, Elise) (Entered: 10/02/2015)
10/02/2015	<u>31</u>	First MOTION to Supplement <i>Record</i> by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion to Supplement Record, # <u>2</u> Appendix Appendix of Supplemental Exhibits, # <u>3</u> Exhibit PX 50 Official Transcript Volume 1, # <u>4</u> Exhibit PX 51 Official Transcript Volume 2, # <u>5</u> Exhibit PX 52 Official Transcript Volume 3, # <u>6</u> Exhibit PX 53 Official Transcript Volume 4, # <u>7</u> Exhibit PX

		54 Official Transcript Volume 5, # <u>8</u> Exhibit PX 55 Official Transcript Volume 6, # <u>9</u> Exhibit PX 56 Official Transcript Volume 7, # <u>10</u> Exhibit PX 57 General Counsel Exhibits 1–6)(Demirok, Sara) (Entered: 10/02/2015)
10/02/2015	<u>32</u>	*MOTION to Clarify Response Time for Filing Opposition to <u>9</u> Motion to Try Petition for Temporary Injunction and Motion for Extension of Time For Filing Response/Reply to <u>9</u> by Shamrock Foods Company. (Shields, James). *Added MOTION for Extension of Time to File Response/Reply on 10/5/2015 (REK). (Entered: 10/02/2015)
10/02/2015	<u>33</u>	Additional Attachments to Main Document re: <u>31</u> First MOTION to Supplement <i>Record Additional Attachments</i> by Plaintiff Cornele A Overstreet. (Attachments: # <u>1</u> Exhibit PX 58 General Counsel Exhibits 7–10, # <u>2</u> Exhibit PX 59 General Counsel Exhibits 11–14, # <u>3</u> Exhibit PX 60 General Counsel Exhibits 15–16, # <u>4</u> Exhibit PX 61 General Counsel Exhibits 17–29, # <u>5</u> Exhibit PX 62 Respondent Exhibits 1–5)(Demirok, Sara) (Entered: 10/02/2015)
10/02/2015	<u>34</u>	Second MOTION for Leave to File <i>Non–Electronic Exhibits</i> by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order)(Oviedo, Elise) (Entered: 10/02/2015)
10/05/2015	<u>35</u>	Additional Attachments to Main Document re: <u>32</u> MOTION to Clarify MOTION for Extension of Time to File Response/Reply <i>Proposed Order</i> by Defendant Shamrock Foods Company. (Shields, James) (Entered: 10/05/2015)
10/09/2015	<u>36</u>	ORDER granting <u>32</u> Motion to Clarify Response Time for Filing Opposition to Petitioner's Petition for Temporary Injunction or, in the Alternative, for Leave to File its Response Thereto. On or before 10/16/2015, Respondent shall file its Response to the Petition (Doc. <u>1</u>) and supporting Memorandum (Doc. <u>16</u>). Petitioner may submit a Reply, if any, on or before 10/30/2015. Signed by Judge Diane J Humetewa on 10/9/2015.(LMR) (Entered: 10/09/2015)
10/16/2015	<u>37</u>	<i>Respondent's ANSWER to 1 Complaint / Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act</i> by Shamrock Foods Company.(Inesta, Nancy) (Entered: 10/16/2015)
10/16/2015	<u>38</u>	First MOTION for Leave to File Excess Pages <i>for Memorandum of Points and Authorities</i> by Shamrock Foods Company. (Attachments: # <u>1</u> Text of Proposed Order)(Inesta, Nancy) (Entered: 10/16/2015)
10/16/2015	<u>39</u>	*Filed at <u>45</u> per Order <u>44</u> LODGED Proposed Respondents Memorandum in Opposition to Petitioners Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act re: <u>38</u> First MOTION for Leave to File Excess Pages for Memorandum of Points and Authorities by Defendant Shamrock Foods Company. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. (Inesta, Nancy) ***Duplicate of <u>41</u> and Modified to correct event on 10/19/2015 (REK). (Entered: 10/16/2015)
10/16/2015	<u>40</u>	*Filed at <u>46</u> per Order <u>44</u> LODGED Proposed Document***Additional Attachments to Main Document re: <u>39</u> Memorandum <i>Appendix of Exhibits in Support of Respondent's Opposition</i> by Defendant Shamrock Foods Company. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. (Attachments: # <u>1</u> Exhibit RX1 to RX2, # <u>2</u> Exhibit RX3 to RX6)(Inesta, Nancy) *Modified to correct event on 10/19/2015 (REK). (Entered: 10/16/2015)
10/16/2015	<u>41</u>	*Duplicate of <u>39</u> and per Order <u>44</u> filed at <u>45</u> ***LODGED Proposed Respondents Memorandum In Opposition to Petitioners Petition for Temporary Injunction Under Section 10(i) of the National Labor Relations Act re: <u>38</u> First MOTION for Leave to File Excess Pages <i>for Memorandum of Points and Authorities</i> . Filed by Shamrock Foods Company. (Inesta, Nancy) ***Duplicate of <u>39</u> ***Modified on 10/19/2015 (REK). (Entered: 10/16/2015)
10/19/2015	<u>42</u>	RESPONSE in Opposition re: <u>31</u> First MOTION to Supplement <i>Record</i> filed by Shamrock Foods Company. (Attachments: # <u>1</u> Exhibit RX7 – Transcripts)(Inesta, Nancy) (Entered: 10/19/2015)
10/19/2015	<u>43</u>	RESPONSE in Opposition re: <u>34</u> Second MOTION for Leave to File <i>Non–Electronic Exhibits</i> filed by Shamrock Foods Company. (Inesta, Nancy) (Entered: 10/19/2015)

10/20/2015	<u>44</u>	ORDER: IT IS ORDERED granting the Unopposed Motion for Leave to File Memorandum of Points and Authorities in Excess Page Limitations (Doc. <u>38</u>), allowing Respondent to file a Memorandum in Opposition to Petitioner's Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act, not to exceed thirty (30) pages. IT IS FURTHER ORDERED directing the Clerk of Court to accept and file lodged documents <u>39</u> and <u>40</u> . Signed by Judge Diane J Humetewa on 10/19/2015. (REK) (Entered: 10/20/2015)
10/20/2015	<u>45</u>	MEMORANDUM in Opposition to Petitioner's Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act by Defendant Shamrock Foods Company. (REK) (Entered: 10/20/2015)
10/20/2015	<u>46</u>	Appendix of Exhibits in Support of <u>45</u> Respondent's Memorandum in Opposition to Petitioner's Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act by Defendant Shamrock Foods Company. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(REK) (Entered: 10/20/2015)
10/26/2015	<u>47</u>	REPLY to Response to Motion re: <u>31</u> First MOTION to Supplement <i>Record</i> filed by Cornele A Overstreet. (Oviedo, Elise) (Entered: 10/26/2015)
10/26/2015	<u>48</u>	REPLY to Response to Motion re: <u>34</u> Second MOTION for Leave to File <i>Non-Electronic Exhibits</i> filed by Cornele A Overstreet. (Oviedo, Elise) (Entered: 10/26/2015)
10/29/2015	<u>49</u>	First MOTION for Leave to File Excess Pages for Reply to Respondent's Memorandum in Opposition to the Petition by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion to Exceed Pg Limit)(Demirok, Sara) (Entered: 10/29/2015)
10/29/2015	<u>50</u>	FILED @ Doc. 56 LODGED PROPOSED DOCUMENT re: <u>49</u> MOTION for Leave to File Excess Pages re: *REPLY to Respondent's Memorandum in Opposition to the Petition by Plaintiff Cornele A Overstreet. (Attachments: # <u>1</u> Appendix Appendix of Exhibits in Support of Reply, # <u>2</u> Exhibit Petitioner Exhibits: PX 72, PX 73)(Demirok, Sara) *Modified to correct event on 10/30/2015 (REK). Modified on 12/17/2015 (LFIG). (Entered: 10/29/2015)
10/30/2015	<u>51</u>	RESPONSE in Opposition re: <u>49</u> First MOTION for Leave to File Excess Pages for Reply to Respondent's Memorandum in Opposition to the Petition filed by Shamrock Foods Company. (Inesta, Nancy) (Entered: 10/30/2015)
11/18/2015	<u>52</u>	Second MOTION to Expedite Hearing by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order)(Demirok, Sara) (Entered: 11/18/2015)
12/02/2015	<u>53</u>	RESPONSE in Opposition re: <u>52</u> Second MOTION to Expedite Hearing filed by Shamrock Foods Company. (Inesta, Nancy) (Entered: 12/02/2015)
12/04/2015	<u>54</u>	REPLY to Response to Motion re: <u>52</u> Second MOTION to Expedite Hearing filed by Cornele A Overstreet. (Demirok, Sara) (Entered: 12/04/2015)
12/17/2015	<u>55</u>	ORDER granting Petitioner's <u>49</u> Motion for Leave to File Excess Pages. The Clerk of Court shall file the Reply currently lodged at Doc. 50. Signed by Judge Diane J Humetewa on 12/16/2015.(LFIG) (Entered: 12/17/2015)
12/17/2015	<u>56</u>	REPLY to Respondent's Memorandum in Opposition to Petitioner's <u>1</u> Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act by Plaintiff Cornele A Overstreet. (Attachments: # <u>1</u> Appendix of Exhibits in Support of Reply, # <u>2</u> Exhibits PX 72, PX 73)(LFIG) (Entered: 12/17/2015)
12/17/2015	<u>57</u>	MINUTE ORDER: A Preliminary Injunction Hearing is set for Wednesday, January 6, 2016 at 4:00 PM in Courtroom 605, 401 West Washington Street, Phoenix, AZ 85003 before Judge Diane J Humetewa. The Court will address the remaining pending motions by separate order. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/17/2015)
12/18/2015	<u>58</u>	ORDER that Petitioner's <u>2</u> Motion to Try Petition for Temporary Injunction on the Basis of Affidavits and Other Documentary Evidence, First and Second Motions for Leave to File Non-Electronic Exhibit in Support of Memorandum of Points and Authorities (Docs. <u>11</u> , <u>34</u>), and <u>31</u> Motion to Supplement Record are GRANTED. ORDERED that in light of the hearing scheduled for Wednesday, January 6, 2016,

		Petitioner's <u>8</u> , <u>52</u> Motions for Expedited Hearing are DENIED as moot. Signed by Judge Diane J Humetewa on 12/18/2015.(LFIG) (Entered: 12/18/2015)
01/04/2016	<u>59</u>	First MOTION to Supplement <i>the Record</i> by Cornele A Overstreet. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Motion, # <u>2</u> Appendix Appendix of Exhibit, # <u>3</u> Exhibit PX 74 Petitioner's Post Hearing Brief to ALJ)(Demirok, Sara) (Entered: 01/04/2016)
01/05/2016	<u>60</u>	NOTICE re: of Filing by Cornele A Overstreet <i>Non-Electronic Exhibits</i> . (Demirok, Sara) (Entered: 01/05/2016)
01/05/2016		CD of an audio recording marked PX 49 and a thumb drive containing audio and a video recording marked as PX 63 through PX 71 have been received and are stored in the Phoenix file room. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (CAD) (Entered: 01/05/2016)
01/06/2016	<u>61</u>	MINUTE ENTRY for proceedings held before Judge Diane J Humetewa: Preliminary Injunction Hearing held on 1/6/2016. Argument heard. ORDERED denying Plaintiff's <u>59</u> Motion to Supplement the Record. Within seven (7) days, the parties are directed to file a supplement that specifically points to the evidence that each party is relying on as set forth on the record. APPEARANCES: Sara Demirok and Elise Oviedo for Plaintiff. Todd Dawson and Nancy Inesta for Defendant. (Court Reporter Linda Schroeder.) Hearing held 4:00 PM to 5:42 PM. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 01/07/2016)
01/11/2016	<u>62</u>	TRANSCRIPT REQUEST by Shamrock Foods Company for proceedings held on 1/6/16, Judge Diane J Humetewa hearing judge(s). (Inesta, Nancy) (Entered: 01/11/2016)
01/11/2016	<u>63</u>	TRANSCRIPT REQUEST by Cornele A Overstreet for proceedings held on 01/06/2016, Judge Diane J Humetewa hearing judge(s). (Oviedo, Elise) (Entered: 01/11/2016)
01/12/2016	<u>66</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of <i>PRELIMINARY INJUNCTION HEARING</i> proceedings held on 01/06/2016, before Judge Diane J. Humetewa. (Court Reporter: Linda Schroeder). The ordering party will have electronic access to the transcript immediately. All others may view the transcript at the court public terminal or it may be purchased through the Court Reporter/Transcriber by filing a Transcript Order Form on the docket before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/2/2016. Redacted Transcript Deadline set for 2/12/2016. Release of Transcript Restriction set for 4/11/2016. (RAP) (Entered: 01/21/2016)
01/13/2016	<u>64</u>	SUPPLEMENT Memorandum Providing Index of Citations to Supporting Evidence by Plaintiff Cornele A Overstreet. (Demirok, Sara) (Entered: 01/13/2016)
01/13/2016	<u>65</u>	SUPPLEMENT Brief in Response to the Court's January 7, 2016 Order by Defendant Shamrock Foods Company. (Inesta, Nancy) (Entered: 01/13/2016)
02/01/2016	<u>67</u>	ORDER that Petitioner's <u>1</u> Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act, As Amended is GRANTED. Signed by Judge Diane J Humetewa on 2/1/2016. (LFIG) (Entered: 02/01/2016)
02/01/2016	<u>68</u>	TEMPORARY INJUNCTION ORDER. Signed by Judge Diane J Humetewa on 2/1/2016. (See Order for details.)(LFIG) (Entered: 02/01/2016)
02/04/2016	<u>69</u>	*NOTICE OF INTERLOCUTORY/PRELIMINARY INJUNCTION APPEAL to 9th Circuit Court of Appeals re: <u>67</u> Order, <u>58</u> Order, <u>68</u> Temporary Injunction Order by Shamrock Foods Company. Filing fee received: \$ 505.00, receipt number 0970-12602801. (Inesta, Nancy) *Modified to correct event, text corrected on 2/5/2016* (REW). *Modified text on 2/5/2016 (ATD). (Entered: 02/04/2016)
02/05/2016	<u>70</u>	USCA Case Number re: <u>69</u> Notice of Interlocutory/Preliminary Injunction Appeal; Ninth Circuit Case number 16-15172. (ATD) (Entered: 02/05/2016)

02/22/2016	<u>71</u>	*AFFIDAVIT of Vince Daniels <i>Verifying Compliance with Section 10(j) Injunction</i> <u>68</u> Temporary Injunction Order by Defendant Shamrock Foods Company. (Inesta, Nancy) *Modified to add link on 2/23/2016 (REK). (Entered: 02/22/2016)
02/23/2016	<u>72</u>	*AFFIDAVIT of Vince Daniels re: <u>68</u> Temporary Injunction Order <i>Verifying Compliance with Section 10(j) Injunction</i> by Defendant Shamrock Foods Company. (Shields, James) *Modified to add link on 2/24/2016 (REK). (Entered: 02/23/2016)

Certificate of Service

I hereby certify that I electronically filed the foregoing Appellant's Excerpts of Record (Volume I of II) with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 3, 2016. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: March 3, 2016

/s/ David B. Rivkin, Jr.
David B. Rivkin, Jr.